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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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George Lownes

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EXAMINER

SHEPARD, JUSTIN E

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/047,553		Applicant(s) LOWNES, GEORGE	
	Examiner Justin E. Shepard		Art Unit 2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on 11 April 2008.

2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1 and 3-15 is/are pending in the application.

 4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 1 and 3-15 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some * c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1, 3, 9-13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dinwiddie in view of Kraml in view of Gee in view of OpenCable Specification.

Claim 1, Dinwiddie discloses a method of upgrading operational software in a host device having a smart card interface, the host device including a read-only memory having original software for the host device (figure 1; column 2, lines 28-36), comprising the steps of:

providing a smart card including data representing upgraded software for the host device (column 3, lines 3-6);

interfacing the smart card with the smart card interface of the host device (column 3, lines 3-6),

determining if the smart card is a normal smart card (column 3, lines 3-6);

if the smart card is not a normal smart card, determining if the smart card is a software, upgrade card by recognizing, in the host device, the smart card as including the upgraded software (column 3, lines 3-19);

determining if the upgraded software is compatible with the host device by comparing attributes of the upgraded software to that of the host device, the host device performing the determination of compatibility before the upgraded software is transferred from the smart card (column 3, lines 50-59);

if the upgraded software is determined to be compatible, transferring the upgraded software from the smart card to a memory of the host device to perform the code upgrade (column 3, lines 59-63).

Dinwiddie does not disclose a method for verifying the software transferred to the memory using data stored on the smart card and if the transferred software can not be verified, restoring the original software from the read-only memory; and

wherein the normal smart card is a POD card, and if the smart card is a POD card, initializing the POD card; and

wherein by accessing a cable television card information structure (CIS) of the smart card and locating a tuple in the cable television CIS which identifies the smart card as upgraded software.

In an analogous art, Kraml teaches a method for verifying the software transferred to the memory using data stored on the smart card and if the transferred software can not be verified, restoring the original software from the read-only memory (column 7, lines 25-43)

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Dinwiddie in view of Kraml so to maintain reliability of the system to roll back to previous version while reducing any disruption in the provisioning of service and is inexpensive.(Col. 2, lines 5-37).

Dinwiddie and Kraml do not disclose a method wherein the normal smart card is a POD card, and if the smart card is a POD card, initializing the POD card; and

wherein by accessing a cable television card information structure (CIS) of the smart card and locating a tuple in the cable television CIS which identifies the smart card as upgraded software.

In an analogous art, Gee teaches a wherein the normal smart card is a POD card, and if the smart card is a POD card, initializing the POD card (column 6, lines 4-14; column 9, lines 2-17).

At the time of the invention, it would have been obvious for one of ordinary skill in the art to add the POD card taught by Gee to the method disclosed by Dinwiddie and Kraml. The motivation would have been to enable the headend to scramble video and have the user descramble the video.

Dinwiddie, Kraml and Gee do not disclose a method wherein by accessing a cable television card information structure (CIS) of the smart card and locating a tuple in the cable television CIS which identifies the smart card as upgraded software.

In an analogous art, the OpenCable Spec teaches a method wherein by accessing a cable television card information structure (CIS) of the smart card and locating a tuple in

the cable television CIS which identifies the smart card as upgraded software (page 18, section 5.2; page 19, section 5.3).

At the time of the invention it would have been obvious for one of ordinary skill in the art to use the CIS taught by the OpenCable Spec in the method disclosed by Dinwiddie, Kraml and Gee. The motivation would have been to use the documented PCMCIA standard to save on development costs and allow for the device to work with other devices built within the OpenCable specification.

Claims 9, 13 and 15 are rejected on the same grounds as claim 1.

Claim 3, Dinwiddie further discloses, wherein the smart card includes (National Renewable Security Standard) NRSS conditional access protocols and the step of recognizing the smart card as including the upgraded software includes accessing application information specified by the NRSS (page 5, lines 22-30+ Col. 3, lines 50-57).

Claim 10, the OpenCable Spec further discloses wherein the memory includes further software, configured to control the processor to read CIS data (pages 18 and 19);

Claim 11, the OpenCable Spec further discloses wherein the smartcard conforms to PCMCIA (pages 18 and 19).

Claim 12, Dinwiddie further discloses

The smart card further includes identification data which identifies a host compliant device for which the upgraded software is intended (page 5, lines 22-30+); and

the memory further Includes software that causes the processor to read the Identification data from the smart card and to compare the identification data to identification data for the set top box; whereby the processor determines if the software update is appropriate for the set-top box (page 5, lines 25-28 Col. 3, lines 59-63);

2. Claims 4-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dinwiddie in view of Kraml in view in view of Gee of OpenCable Spec and further in view of Metz et al. (US 5666293) and further in view of Kidder et al (US 2004/0031030).

Claim 4, Dinwiddie, Kraml, Gee and the OpenCable Spec do not clearly disclose, further wherein the host device is an open cable compliant set top box, coupled to a cable head end and includes an out of band channel for transferring data between the host compliant device and the cable head end and the method further includes the step of sending a message to the Cable head end via the out of band channel to indicate that the upgraded software has been transferred to the host compliant device.

In an analogous art, Metz teaches, wherein the host device (100 - figures 1 & 6) is an open cable compliant set top box, coupled to a cable head end (11 - figure 1) and includes an out of band channel for transferring data between the host compliant device and the cable head end (Col. 16, lines 38-62). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention

was made to modify Dinwiddie, Kraml, Gee and the OpenCable Spec in view of the teachings of Metz in order for an open cable compliant set-top box to be connected to a cable head end for the benefit of sending and receiving control information from the cable head end.

The combination of Dinwiddie, Kraml, Gee, the OpenCable Spec and Metz fail to disclose sending a message to the cable head end via the out of band channel to indicate that the upgraded software has been transferred to the host compliant device.

In an analogous art, Kidder discloses when an upgrade is completed; the control shim notifies the slave SMSs, which sends a message to the master SMS or "head end" indicating that the upgrade of software is complete (§ 0494). Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Dinwiddie, Kraml, Gee, the OpenCable Spec and Metz with the teachings of transmitting a message to the headend indicating the installation of new software is completed, as taught by Kidder, in order to notify the headend of the latest version of software installed on the receiver.

Claim 5, is analyzed with respect to claim 1 and 4.

Claim 6, Metz further discloses the memory is a flash memory (Col. 21, lines 33-37)

Claim 7, the OpenCable Spec further discloses wherein the smartcard conform to PCMCIA (pages 18 and 19).

Claim 8 is further met by the analysis of claim 1.

3. Claims 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dinwiddie et al (US 7124210) and further in view of Kraml et al. (US 6141683) in view of Gee in view of the OpenCable Spec and further in view of Kidder et al (US 2004/0031030).

Claim 14, the combination of Dinwiddie, Kraml, Gee, and the OpenCable Spec fail to disclose determining whether the software upgrade was successful and sending a message to the cable head end when the software upgrade is complete.

In an analogous art, Kidder discloses when an upgrade is completed; the control shim notifies the slave SMSs, which sends a message to the master SMS or "head end" indicating that the upgrade of software is complete (§ 0494). Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Metz, Dinwiddie, Kraml, and the OpenCable Spec with the teachings of transmitting a message to the headend indicating the installation of new software is completed of Kidder in order to notify the headend of the latest version of software installed on the receiver.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin E. Shepard whose telephone number is (571) 272-5967. The examiner can normally be reached on 7:30-5 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Chris Kelley/

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Supervisory Patent Examiner, Art
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